

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

LOUIS CASTRO PEREZ

V.

**NATHANIEL QUARTERMAN,
DIRECTOR, TEXAS DEPARTMENT
OF
CRIMINAL JUSTICE-
INSTITUTIONAL
DIVISION**

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1:09-cv-00081-LY

**PETITIONER'S REQUEST TO REOPEN THE TIME TO FILE NOTICE OF
APPEAL**

Comes now Petitioner, Louis Perez, and respectfully requests that this Court reopen the time for him to file a notice of appeal under Rule 4(a)(6) of the Federal Rules of Appellate Procedure. Generally, a notice of appeal must be filed within thirty days of the entry of judgment. *See* FED. R. APP. PR. 4(a)(1). However, under some circumstances the district court may reopen the time to appeal if the party did not receive notice of the entry of the judgment. Specifically, Rule 4(a)(6) provides:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;
- (B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds no party would be prejudiced.

As laid out in the attached Declaration of Petitioner's Counsel, Sadaf Khan, Petitioner did not receive timely notice of the entry of Judge Yeakel's Final Judgment dated March 27, 2012. *See* Declaration of Sadaf Khan (attached). Petitioner's filing with the Court complies with the Rule's deadline for filing within 180 days of the entry and within the seven days of receiving notice. *See* Final Judgment date March 27, 2012 (Document 60). Granting Petitioner's request to reopen the time to file a notice of appeal will not prejudice the State and will allow Petitioner to exercise his right to an appeal. Because this is a death penalty case, granting Petitioner Perez's request to reopen the time to file his notice of appeal is in the interest of justice and will provide equitable relief without prejudicing the State. Failing to grant Petitioner's motion will unnecessarily harm Petitioner and may result in his involuntary waiver of his right to appeal.

Relief

Petitioner Perez respectfully requests that this Court grant his Motion to Reopen the Time to File a Notice of Appeal pursuant to Federal Rule of Appellate Procedure 4(a)(6).

Alternately, Petitioner request that this Court, in view of the extraordinary circumstances of this case, and the fact that this is a death penalty case, exercise its inherent equitable power to permit Petitioner to file an untimely Notice of Appeal.

Respectfully submitted,

/s/ Sadaf Khan
Sadaf Khan
Attorney for Petitioner
Texas State Bar No. 24028983

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CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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/s/ Sadaf Khan
Sadaf Khan
Attorney for Petitioner
Texas State Bar No. 24028983

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**ORDER FOR PETITIONER'S REQUEST TO REOPEN THE TIME TO FILE
NOTICE OF APPEAL**

Came on this day to be considered Petitioner Perez's Motion to Reopen the Time to File a Notice of Appeal. The Court after considering the Motion filed herein is of the opinion that the following order be issued:

It is hereby ORDERED, ADJUDGED and DECREED that said Motion be **GRANTED/ DENIED.**

SIGNED on this _____ day of _____, 2012.

**LEE YEAKEL
UNITED STATES DISTRICT JUDGE**